IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.430 OF 1998

Arunkumar Pragji alias Premji Thakkar ...Plaintiff

Versus

Ramniklal Zaverchand Shah & Ors. ...Defendants

Ms Ratna Jaiswal i/by Nandu Pawar for the Plaintiff.

CORAM : ABHAY S.OKA, J.
DATED : JULY 03, 2007.

P.C.:

1. Heard the learned counsel appearing for the Plaintiff. The Defendants have not filed written statement.

2. My attention has been invited to order dated 29th October, 2002 passed by this Court in Notice of Motion No.735 of 2001. By the said order, the said Notice of Motion has been made absolute in terms of prayer clauses (a) and (b). Thus, the defence of the Defendants has been struck out. The learned counsel for the Plaintiff states that the said order has attained finality.

3. My attention has been invited to the report submitted by the Commissioner for taking Accounts, High

Court, Mumbai. By order dated 12th August, 1998 passed by this Court, a direction was issued for referring the matter to the Commissioner for taking Accounts. The Commissioner, in his report, has stated that the Plaintiff has not examined himself and has not produced any other witness. It is recorded that the Plaintiff has not produced any documents. The Commissioner has noted that the Plaintiff has not chosen to give evidence and the profit of the suit firm is shown nil in the ITR. It is observed that no supporting documents were produced by the Plaintiff. Therefore, the Commissioner has expressed inability to determine the share of the Plaintiff.

4. Considering the facts and circumstances of the case, the Plaintiff is entitled to a decree. However, with a view to give opportunity to lead evidence and to produce the material in the form of documents, a direction will have to be given to the Commissioner for taking Accounts to hold a fresh inquiry.

5. In prayer clause (f) the Plaintiff has prayed for interest at the rate of 24 per cent per annum. The prayer for interest will have to be restricted to 18 per cent per annum.

6. Hence, there will be a decree in terms of prayer clauses (a) to (f) with modification that the rate of interest will be 18 per cent per annum from the date of suit till realisation. The interim order passed in Notice of Motion No.1272 of 1998 will continue to operate till the Commissioner for taking Accounts submits a report. The Commissioner shall submit the report within a period of six months from today.

JUDGE